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BellSouth Telecommunications, Inc. and Gary L. Lee and Jim Amburn

Communications Workers of America, AFL–CIO and Gary L. Lee and Jim Amburn. Cases 11–CA–17096, 11–CA–17140, 11–CB–2688, and 11–CB–2699

February 28, 2006

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

On August 29, 2001, the National Labor Relations Board issued its Decision and Order in this proceeding.¹ The Board found that Respondent BellSouth Telecommunications, Inc. (BellSouth) did not violate Section 8(a)(1), (2), and (3) of the Act and that Respondent Communications Workers of America, AFL–CIO (CWA) did not violate Section 8(b)(1)(A) and (2) of the Act by entering into a contractual provision requiring employees in specified job classifications, and those who had contact with the public, to wear a uniform bearing both the BellSouth and CWA logos.² The Board specifically found that the Respondents could lawfully agree to and implement a policy requiring employees to wear a company uniform that displays both the BellSouth and CWA logos despite the objections of certain employees to displaying the CWA logo. Although recognizing that the compelled wearing of the CWA logo implicated employees’ Section 7 right to refrain from engaging in activities in support of a labor organization, the Board found that the Section 7 interest was outweighed by special circumstances underlying the collectively bargained uniform policy.

Subsequently, Charging Parties Gary L. Lee and Jim Amburn filed a petition for review of the Board’s Order with the United States Court of Appeals for the Fourth Circuit. On January 4, 2005, the court granted the petition for review, and vacated the Board’s dismissal order based on its finding that BellSouth and the CWA had violated the Act as alleged.³ The court held that the Board’s finding of special circumstances validating the uniform policy was not supported by substantial evidence. Accordingly, the court further held that “(b)y pay-

ing to place the union logo on the uniforms and making the wearing of the union logo on uniforms a condition of employment, BellSouth violated Section 8(a)(1), (2), and (3) of the Act. Similarly, CWA violated Section 8(b)(1)(A) and 8(b)(2) of the Act by proposing and agreeing to require employees to wear the union logo and by accepting BellSouth’s financial support.” 393 F.3d at 497. The court remanded the proceeding to the Board with directions to modify its order consistent with the court’s opinion.

By letter dated June 10, 2005, the Board notified the parties that it had accepted the remand and invited the parties to file statements of position. Thereafter, Respondent BellSouth, Respondent CWA, and the Charging Parties filed position statements, and the Charging Parties filed a reply brief.

The court’s finding that the Respondents violated the Act, as set forth above, is the law of the case. Accordingly, we find the violations, as alleged. Further, as directed by the court, we shall modify our original order and enter a new Order.

REMEDY

Having found that the Respondents engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The Respondents maintained a collective-bargaining agreement containing a provision that unlawfully required employees to wear uniforms with a CWA logo. The Respondents shall be required to rescind those contractual provisions which mandate the wearing of the CWA logo on uniforms, and to post notices in all locations where unit employees covered by those contractual provisions are employed. See *Raley’s Inc.*, 311 NLRB 1244 fn. 2 (1993) (rescission of unlawful dress code rule and posting at all locations where unlawful rule was in effect ordered). In their position statements, Respondent BellSouth and the Charging Parties assert that a recent collective-bargaining agreement has modified the former uniform policy mandating the compelled wearing of the CWA logo, but that some employees still are required to wear the CWA logo. The alleged agreement is not in the record, and thus we leave to compliance consideration of the impact this alleged modification may have on our Order. However, assuming that the parties have accurately described the contract, it is nonetheless our view that no employee can be required to wear the CWA logo.

We note that the Respondents seek a Board order that would simply proscribe them from interfering with, restraining or coercing employees who object to wearing the CWA logo. That approach suggests that, in order to escape the requirement, employees must affirmatively

¹ 335 NLRB 1066 (2001).

² Chairman Battista and Member Schaumber did not participate in the underlying decision.

³ *Lee v. NLRB*, 393 F.3d 491 (4th Cir. 2005).

object to the wearing of the logo, and that no reprisal will be taken. Similarly, the Respondents would simply give employees the opportunity to “opt out” of the requirement. We would take a more straight forward approach.

We believe that employees are to be told that there is no requirement to wear the CWA logo, and that they are free to wear the CWA logo or not. Employees can then “opt” either way, and no reprisals will be taken.⁴

ORDER

The National Labor Relations Board orders that the Respondents, BellSouth Telecommunications, Inc., Charlotte, North Carolina, and Communications Workers of America, AFL-CIO, shall take the action set forth in the Order.

A. Respondent BellSouth Telecommunications, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining and enforcing any provisions in its collective-bargaining agreement with Communications Workers of America, AFL-CIO (CWA), requiring employees to wear on their uniforms the CWA logo.

(b) Informing employees that they are required to wear the CWA logo on their uniforms.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind and cease enforcing any provisions of its collective-bargaining agreement with Communications Workers of America, AFL-CIO, that require employees to wear on their uniforms the CWA logo.

(b) Inform all employees that they are free to wear the CWA logo or not, and that no reprisals will be taken for either choice.

(c) Within 14 days after service by the Region, post in all locations where unit employees covered by those contractual provisions requiring employees to wear the CWA logo on their uniforms are employed, copies of the attached notice marked “Appendix A.”⁵ Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by Respondent BellSouth’s authorized representative, shall be posted by Respondent

BellSouth and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent BellSouth to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent BellSouth has gone out of business or closed the facility involved in these proceedings, Respondent BellSouth shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent BellSouth since August 6, 1995, who were covered by those contractual provisions requiring employees to wear the CWA logo on their uniforms.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent BellSouth has taken to comply.

B. Respondent Communications Workers of America, AFL-CIO, its officers, agents, and representatives shall

1. Cease and desist from

(a) Maintaining and enforcing any provisions in its collective-bargaining agreement with BellSouth Telecommunications, Inc. requiring employees to wear on their uniforms the CWA logo.

(b) Informing employees that they are required to wear the CWA logo on their uniforms.

(c) In any like or related manner restraining or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind and cease enforcing any provisions of its collective-bargaining agreement with BellSouth Telecommunications, Inc. that require employees to wear on their uniforms the CWA logo.

(b) Inform all employees that they are free to wear the CWA logo or not, and that no reprisals will be taken for either choice.

(c) Within 14 days after service by the Region, post at those union offices servicing employees covered by any provisions of its collective-bargaining agreement with BellSouth Telecommunications, Inc. that require employees to wear on their uniforms the CWA logo copies of the attached notice marked “Appendix B.”⁶ Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the authorized representative of Respondent Communications Workers of America, AFL-CIO, shall be posted by Respondent

⁴ We decline to require individual notice to each affected BellSouth employee in the absence of a showing that those employees would not be reached through customary posting procedures. We note that no party contends that a monetary remedy of any kind is appropriate.

⁵ If this Order is enforced by a judgment of the United States Court of Appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

⁶ See fn. 5 supra.

Communications Workers of America, AFL–CIO, and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent Communications Workers of America, AFL–CIO, to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Forward to the Regional Director for Region 11 signed copies of the attached notice marked “Appendix B” for posting by BellSouth Telecommunications, Inc.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Communications Workers of America, AFL–CIO, has taken to comply.

Dated, Washington, D.C. February 28, 2006

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain and enforce any provisions in our collective bargaining agreement with Communications Workers of America, AFL–CIO (CWA), that require you to wear on your uniform the CWA logo.

WE WILL NOT inform you that you must wear the CWA logo on your uniform.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL rescind and stop enforcing any provisions of our collective bargaining agreement with Communications Workers of America, AFL–CIO (CWA), that require you to wear the CWA logo on your uniform.

WE WILL inform you that you are free to wear the CWA logo or not, and that no reprisals will be taken for either choice.

BELLSOUTH TELECOMMUNICATIONS, INC.

APPENDIX B

NOTICE TO MEMBERS

POSTED BY ORDER OF THE

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The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

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WE WILL NOT maintain and enforce any provisions in our collective-bargaining agreement with BellSouth Telecommunications, Inc. that require you to wear on your uniform the CWA logo.

WE WILL NOT inform you that you must wear the CWA logo on your uniform.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights set forth above.

WE WILL rescind and stop enforcing any provisions of our collective-bargaining agreement with BellSouth Telecommunications, Inc. that require you to wear the CWA logo on your uniform.

WE WILL inform you that you are free to wear the CWA logo or not, and that no reprisals will be taken for either choice.

COMMUNICATIONS WORKERS OF AMERICA,
AFL–CIO